Syscon International, Inc. *and* International Brotherhood of Electrical Workers, Local 1392. Case 25–CA–23258

November 19, 1996

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS BROWNING AND FOX

On March 14, 1996, Administrative Law Judge William Jacobs issued the attached decision. The Respondent filed limited exceptions and a supporting brief, and the Charging Party filed an answering brief to the Respondent's limited exceptions.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the limited exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions[1] and to adopt the recommended Order as modified[2] and set forth in full below.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified and set forth in full below and orders that the Respondent, Syscon International, Inc., South Bend, Indiana, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to recognize and bargain collectively, on request, concerning rates of pay, wages, hours, and other terms and conditions of employment, with International Brotherhood of Electrical Workers, Local 1392 as the exclusive bargaining representative of its employees in the following appropriate unit:

> All full-time and regular part-time employees employed by Respondent at its plant or plants located in South Bend, Indiana, including the employee and work classifications of Production Employee, Screen Room Technician, Shipping/Receiving Clerk, Maintenance, PC Attendant and Production Technician, tool and die makers, set up men and apprentices; BUT EXCLUDING office clerical employees, tool room supervisor, engineering and laboratory technicians, timekeepers, guards, supervisors, professional employees and free trade zone personnel.

(b) Making unilateral changes in existing terms and conditions of employment without first notifying Local 1392 and giving it an opportunity to bargain over such changes.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Recognize and, on request, bargain with International Brotherhood of Electrical Workers, Local 1392 as the exclusive representative of all the employees in the appropriate unit with respect to rates of pay, wages, hours, and other terms and conditions of employment and, if an understanding is reached, embody such understanding in a signed agreement.

(b) Pay to Local 1392 dues which should have been, but were not, deducted from employees' paychecks pursuant to valid dues-checkoff authorizations until the expiration of the 1993–1995 contract, with interest as prescribed in this decision.

(c) Make the unit employees whole by paying to them those wages and benefits lost by reason of the Respondent's midterm repudiation of the 1993–1995 agreement, with interest, as set forth in the remedy section of the judge's decision, as modified by the Board's decision. The Respondent's obligation to make these employees whole continues so long as the agreement is in effect or until it negotiates in good faith with the Union to a new agreement or to an impasse, whichever occurs later. However, nothing in this Order shall be construed to require the rescission of benefits granted to employees since April 5, 1994.

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[1] We agree with the judge, for the reasons set forth by him, that the Respondent violated Sec. 8(a)(5) and (1) of the Act by withdrawing recognition from the Union during the term of the parties' collective-bargaining agreement. It is well established that a union is irrebuttably presumed to continue to enjoy the support of a majority of the unit employees while a collective-bargaining agreement is in effect, and an employer cannot use doubt about a union's majority as a defense to a refusal-to-bargain charge during that term. See, e.g., *NLRB v. Burns Security Services*, 406 U.S. 272, 290 fn. 12 (1972); and *Lee Lumber & Building Material Corp.*, 322 NLRB 175, 176–177 (1996). These rules are necessary to serve the Act's overriding policy of achieving industrial peace, and promoting stability in collective-bargaining relationships without unduly interfering with employees' free choice. See *NLRB v. Curtin Matheson Scientific, Inc.*, 494 U.S. 775, 794 (1990); and *Fall River Dyeing Corp. v. NLRB*, 482 U.S. 27, 38 (1987).

In addition, we find meritless the Respondent's contention in its exceptions that the Union's dues-checkoff authorizations are illegal under Indiana state law because they are not revocable at any time. Sec. 302(c)(4) of the Labor Management Relations Act (LMRA) specifically permits dues-checkoff authorizations so long as they are not "irrevocable for a period of more than one year, or beyond the termination date of the applicable collective agreement, whichever occurs sooner[.]" Accordingly, fundamental principles of Federal preemption require that the state law must yield to the statutory provisions of the Act. See *Lockheed Space Operations*, 302 NLRB 322, 324 (1991); and *Shen-Mar Food Products*, 221 NLRB 1329, 1330 (1976), enfd. as modified 557 F.2d 396 (4th Cir. 1977).

Chairman Gould agrees that the state law here is preempted by the Act, but finds it unnecessary to rely on *Lockheed*, supra, and expresses no view as to the viability of *Lockheed*.

[2] We shall modify the judge's recommended Order in accordance with our decision in *Indian Hills Care Center*, 321 NLRB 144 (1996). Further, the interest on any payments ordered pursuant to the remedy in this decision shall be calculated as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

(d) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(e) Within 14 days after service by the Region, post at its place of business in South Bend, Indiana, copies of the attached notice marked "Appendix."[3] Copies of the notice, on forms provided by the Regional Director for Region 25, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since June 7, 1994.

(f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provdied by the Region attesting to the steps that the Respondent has taken to comply.

[3] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to recognize and bargain collectively, on request, concerning rates of pay, wages, hours, and other terms and conditions of employment, with International Brotherhood of Electrical Workers, Local 1392 as the exclusive bargaining representative of its employees in the following appropriate unit:

> All full-time and regular part-time employees employed by us at our plant or plants located in South Bend, Indiana, including the employee and work classifications of Production Employee, Screen Room Technician, Shipping/Receiving Clerk, Maintenance, PC Attendant and Production Technician, tool and die makers, set up men and apprentices; BUT EXCLUDING office clerical employees, tool room supervisor, engineering and laboratory technicians, timekeepers, guards, supervisors, professional employees and free trade zone personnel.

WE WILL NOT make unilateral changes in existing terms and conditions of employment without first notifying Local 1392 and giving it an opportunity to bargain over such changes.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of rights guaranteed you by Section 7 of the Act.

WE WILL recognize and, on request, bargain with International Brotherhood of Electrical Workers, Local 1392 as the exclusive representative of all the employees in the appropriate unit with respect to rates of pay, wages, hours, and other terms and conditions of employment and, if an understanding is reached, embody such understanding in a signed agreement.

WE WILL pay to Local 1392 dues which should have been, but were not, deducted from employees' paychecks pursuant to valid dues-checkoff authorizations until the expiration of the 1993–1995 contract, with interest.

WE WILL make the unit employees whole by paying to them those wages and benefits lost by reason of the midterm repudiation of the 1993–1995 agreement, with interest. The Respondent's obligation to make these employees whole continues so long as the agreement is in effect or until it negotiates in good faith with the Union to a new agreement or to an impasse, whichever occurs later. However, nothing in this Order shall be construed to require the rescission of benefits granted to employees since April 5, 1994.

SYSCON INTERNATIONAL, INC.

David L. Ness, Esq., for the General Counsel.
Stephen LePage and *David Crittenden, Esqs.*, of Greenwood, Indiana, for the Respondent.
Martin J. Crane, Esq., of Washington, D.C., for the Charging Party.

DECISION

STATEMENT OF THE CASE

WILLIAM JACOBS, Administrative Law Judge. This case was tried in South Bend, Indiana, on June 22 and 23, 1995. The complaint, as amended, alleges that Syscon International, Inc. (Respondent) violated Section 8(a)(5) and (1) of the Act by withdrawing recognition from Local 1760 of the International Brotherhood of Electrical Workers (Local 1760) as the bargaining representative of its employees and by refusing to recognize and bargain with it and its successor, Local 1392 of the International Brotherhood of Electrical Workers (Local 1392), after the amalgamation of Local 1760 into

Local 1392. The complaint also alleges that Respondent violated Section 8(a)(5) and (1) by failing to continue the terms and conditions of an existing collective-bargaining agreement, including the deduction of union dues and their remittance to the appropriate union, and by unilaterally granting 6-paid sick leave days to employees without affording Local 1760 an opportunity to bargain. The Respondent denied the essential allegations in the complaint. I received briefs from the parties and have read and considered them.

Based on the entire record, including the testimony of the witnesses and my observation of their demeanor, I make the following

FINDINGS OF FACT

I. JURISDICTIONAL MATTERS

Respondent, an Indiana corporation, with a plant in South Bend, Indiana, manufactures industrial instruments and control systems. It is admitted that Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

Local 1760 was and Local 1392 is a labor organization within the meaning of Section 2(5) of the Act. The two Unions will sometimes be referred to as the Union since I find, as discussed hereafter, that the merger of Local 1760 into Local 1392 was valid and Local 1392 is the lawful successor to Local 1760. Both Unions are affiliated with the same International Union, the International Brotherhood of Electrical Workers (IBEW).

II. THE UNFAIR LABOR PRACTICES

A. *The Facts*

1. Background

Respondent voluntarily recognized Local 1760 as the bargaining representative of its production and maintenance employees in the early 1970s, after it purchased the business from a predecessor employer who had previously recognized the Union. Respondent and Local 1760 were parties to successive collective-bargaining agreements until a Board decertification election in December 1992 that resulted in a union victory and Board certification. The parties thereafter entered into another collective-bargaining agreement that was in effect from November 1, 1993, through October 31, 1995. The agreement is to continue thereafter from year to year unless notice of termination is given in accordance with its provisions. The agreement also contains a union-security clause that requires employees to become union members and pay union dues or their equivalent after 90 days of employment or the effective date of the agreement, whichever is later. It also contains a dues-checkoff clause which authorizes the Respondent to withhold dues from employees who execute a written authorization and to forward the amounts to Local 1760 no later than the 10th of each month. Sixteen of Respondent's employees signed checkoff authorizations which were revocable on written notice to both the Union and Respondent only at or during specified times.

In relevant part, each authorization provided as follows:

> This assignment, authorization and direction shall be irrevocable for the period of one (1) year from date of delivery hereof, to you, or until the termination of the collective agreement between the Company and the Union which is in force at the time of delivery of this authorization, whichever occurs sooner; and I agree and direct that this assignment, authorization and direction shall be automatically renewed, and shall be irrevocable for successive periods of one (1) year each or for the period of each succeeding applicable collective agreement between the Company and the Union, whichever shall be shorter, unless written notice is given by me to the Company and Union, not more than twenty (20) days and not less than ten (10) days prior to the expiration of the applicable collective agreement between the Company and the Union whichever occurs sooner.

2. The withdrawal of recognition

On March 10, 1994, Local 1760 held a membership meeting at which it was proposed that monthly dues be increased by $4.50 and a special assessment of $40 be enacted. These measures were required in part because of expenses incurred in connection with recent negotiations with Respondent and anticipated expenses in upcoming negotiations with two other firms whose employees were represented by Local 1760. At another meeting on March 24, 1994, the membership narrowly approved the dues increase and the assessment. The membership, including the members who worked for Respondent, had received notification of the meetings dealing with the dues increase and assessment.

On March 27, Greg Brown, who had been elected the month before to replace the previous president and business manager, Richard Kiefer, on an acting basis after the latter's resignation, mailed letter and notices of the increases to each of the employers with whom the Union had contracts. The letter to Respondent did not contain a letterhead but identified Brown as president of Local 1760. Respondent's vice president, Steve Thomas, who received Brown's letter and the notice, testified that he normally dealt with Richard Kiefer and did not know that Brown had succeeded Kiefer. Thomas did not, however, attempt to contact Kiefer to ask for a clarification.

On April 5, 1994, 5 months into the term of the new bargaining agreement between Respondent and Local 1760, Respondent's vice president, Thomas, sent a letter to the Regional Director for Region 25 of the NLRB, with copies to a vice president of the IBEW International Union and Kiefer, the previous president of Local 1760, announcing Respondent's withdrawal of recognition of Local 1760. Attached to the letter was a petition signed by 18 of Respondent's 19 employees, stating that the employees no longer wanted to be members of or represented by "the IBEW," and revoking their dues-checkoff authorizations.

The letter reads as follows:

> Local 1760 of the I.B.E.W., with whom we currently have an active labor agreement, is in a state of financial and organizational disarray. Last week our Union Steward, Tami Carter, came to me and said she wanted to resign from her position as Steward but since all of the officers of the local have resigned, she didn't know who to resign to. She stated that the Local had a person serving as Acting President until they held new elections but she didn't have his address. She also stated

that so far no one in the Local had indicated a willingness to run for any office and she had been told if they couldn't get persons to run for officer positions Local 1760 would be merged into another local. Based upon this information, it is our belief that a schism exists within Local 1760 of the I.B.E.W. which would allow us to withdraw recognition.

This morning, I was presented with the attached petition which has been signed by eighteen of the nineteen members of the bargaining unit here at SYSCON International, Inc. This petition would certainly support our conclusion that the schism exists within the union ranks and indeed carries one step farther. Although we are in the midst of a Contract and therefore the Contract Bar Rule is in effect, our legal counsel has informed us that a bargaining unit must consist of at least two persons and with eighteen of the nineteen withdrawing from the Union and revoking check-off authorization, the employees have in effect eliminated the legal basis for union representation.

Based upon the above stated evidence and the attached petition, we are hereby withdrawing recognition form Local 1760 of the I.B.E.W. Please contact me if you have any questions or comments.[1]

After he was notified by Kiefer of Thomas' letter, Brown wrote Thomas, on May 9, 1994, protesting the withdrawal of recognition as "illegal." The letter states that Local 1760 is and continues to be "willing and able to administer" the contract and to fulfill its role as the employees' bargaining representative. In a second letter to Thomas, dated May 25, 1994, Brown demanded that Respondent continue to deduct and remit dues in accordance with the applicable provisions of the contract. He stated that the employees' revocation in the petition were "ineffective" because the petition "does not comply with the terms of the checkoff authorization that each of the [Respondent's] employees agreed to and signed."

After the withdrawal of recognition in April 1994, Respondent stopped applying the collective-bargaining agreement to unit employees. It has not collected or remitted dues to Local 1760 or to Local 1392. And it implemented, for unit employees, a policy and procedure manual that applied to nonbargaining unit employees. According to Vice President Thomas, Respondent "implemented [a] whole set of policies and procedures" because, in his view, "[t]he old contract was no longer into effect and we needed a new set of rules." Among these new policies and procedures was the grant of 6-paid sick leave days, a benefit that did not exist prior thereto for bargaining unit employees. All of this was done unilaterally and without prior notice to Local 1760.

[1] Some of Thomas' testimony about his conversation with Carter related in his letter was contradicted by Carter. To the extent that the two versions of this conversation differ, I credit Carter, who testified that she told Thomas that Brown was acting president and had notified Brown of her resignation as union steward at the March 24 membership meeting. In any event, neither Thomas' testimony nor his recitation of Local 1760's troubles in his letter is to be considered a reliable account of Local 1760's actual operations or representative status at this time.

3. The merger

In early 1994, Local 1760 represented a total of about 230 people employed by Respondent and eight other companies with which it had collective-bargaining agreements. Except for two small units, each of the companies was served by a union steward who was also an employee. After Brown took over as president and business manager on an acting or temporary basis on February 15, 1994, he communicated with the union stewards at each of companies the Union represented, including Carter, the steward at Respondent's facility. Brown spearheaded the effort to increase the union dues and to enact the special assessment. By August 1994, the Union's financial situation improved. Local 1760 was debt free and the assessment was returned to the employees in November 1994.

Despite the fact that Brown held a regular job and was serving as president and business agent on a temporary and part-time basis, he managed to negotiate bargaining agreements with two employers during his tenure. He and the stewards and other officials of Local 1760, with help from representatives of the International, continued to administer its collective-bargaining agreements, except for that with Respondent. Local 1760 continued to process grievances and had a functioning executive board, although there were resignations and replacements. However, because Local 1760's dues structure could not support a full-time business agent, which it needed, Local 1760 decided to merge with Local 1392, another local of the IBEW International based in South Bend, Indiana, where Local 1760 was based. The process was formally referred to as an amalgamation so both terms, merger, and amalgamation are used herein.

David Schimmel, the business manager of Local 1392, met with members of the Local 1760 executive board and with the membership at large in connection with the possible merger. The membership also considered merger with Local 153 of the IBEW and a motion was passed that the membership should vote on whether to amalgamate with Local 153 or Local 1392. At the end of August 1994, the members of Local 1760 voted by secret ballot on the merger question. The ballots were distributed to the union stewards at each facility where Local 1760 represented employees and the ballots were collected and returned in envelopes. Each member was to sign for the ballots but their names did not appear either on the ballots or the envelopes. The ballots were counted in the presence of Brown and a group of stewards.

Of the approximately 230 members of Local 1760, 203 members voted. Respondent's employees did not vote because they had not paid their dues for several months and were not, under the applicable IBEW constitution, members of Local 1760 eligible to vote. The overwhelming majority of the voting members voted to merge with Local 1392. The vote was 195 for a merger with Local 1392, 7 for a merger with Local 153; and one blank ballot was received. There were no objections to the conduct of the election.[2]

Based on the election results, Local 1760 sought and received the approval for the amalgamation of the two locals from the IBEW International in accordance with the IBEW constitution. By letter dated January 4, 1995, International

[2] The approximately 480 members of Local 1392 subsequently approved the amalgamation.

President J. J. Barry approved the amalgamation, effective January 1, 1995.

After the amalgamation, all Local 1760 records, funds, property, and other obligations were transferred to Local 1392. Prior to the merger, Local 1392 was comprised of seven units; after the merger, an eighth unit, the manufacturing and motor shop unit, was added, which was comprised solely of former Local 1760 bargaining units. All units, including the new Local 1760 unit, conduct separate regularly scheduled meetings. The former chairman of the Local 1760 executive board is the chairman of the manufacturing and motor shop unit and the vice chairman is Greg Brown. A former Local 1760 member also serves on the Local 1392 executive board. Former Local 1760 members became members of Local 1392. No initiation fees were charged to the former Local 1760 members and all now pay their dues to Local 1392.

After the amalgamation, all employers with Local 1760 agreements recognized Local 1392, except for Respondent. Local 1392 has engaged in collective bargaining with those employers and has processed grievances on behalf of former Local 1760 members. It has also maintained Local 1760's health and welfare fund even though Local 1392 did not have such a fund of its own prior to the merger. One of the two union trustees is a former Local 1760 member. The former Local 1760 stewards still act as stewards at their employer's facilities under the auspices of Local 1392.

On March 24, 1995, Local 1392 formally notified Respondent by letter of the amalgamation and asked for the remittance of dues to Local 1392 in accordance with the existing contract because Local 1392 was the successor to Local 1760. There was no response to this letter.

B. *Discussion and Analysis*

1. The withdrawal of recognition

It is well settled, under the Board's contract-bar rule, that an employer who withdraws recognition of a union during the term of a collective-bargaining agreement violates Section 8(a)(5) and (1) of the Act. *Dominick's Finer Foods*, 308 NLRB 935, 945 (1992). As a general matter, the incumbent union at this point enjoys an irrebuttable presumption of its majority status. See *BASF-Wyandotte Corp.*, 276 NLRB 498, 504 (1985). "[D]uring this time, an employer cannot use doubt about a union's majority as a defense to a refusal-to-bargain charge." *NLRB v. Burns Security Services*, 406 U.S. 272, 290 fn. 12 (1972), citing cases. See also *Burger Pits, Inc.*, 273 NLRB 1001, 1002 (1984).

Respondent's reasons for withdrawing recognition were stated in its letter of April 5. It relied on petitions rejecting the Union from 18 of its 19 employees, thus leaving it, allegedly, with a one-person unit incapable of representation. It also cited alleged difficulties within Local 1760 which it stated amounted to a "schism," a technical term which may, in certain very limited situations, permit a withdrawal of recognition during the term of a contract. See *Hershey Chocolate Corp.*, 121 NLRB 901 (1958). None of these defenses applies in the circumstances of this case.

Respondent's arguments that the petitions show a loss of majority and a reduction of the unit to one are without merit. These are simply not defenses to a withdrawal of recognition during a contract term of reasonable duration. The petitions may not be relied on during the contract term, except for a period at the end where the employer may announce its intention not to negotiate a successor agreement, a situation not present here. See *Burger Pits*, supra. Moreover, the prohibition against bargaining in a one-person unit applies only where there is one person employed in the unit, not, as here, where all but one employee reject the union. See *Stern Made Dress, Inc.*, 218 NLRB 372 (1975).

Respondent also relied on an alleged schism within Local 1760. However, none of the difficulties experienced by Local 1760 at this time amounted to a legally recognized schism which is defined as follows:

> A basic intraunion conflict over policy at the highest level of an international union or within a federation which results in a disruption of existing intraunion relationships; and the employees seek to change their representative for reasons related to such conflict resulting in such confusion in the bargaining relationship that stability can only be restored by an election.

Yates Industries, 264 NLRB 1237, 1249 (1982), citing *Hershey Chocolate*, supra. See also *Dominick's Finer Foods*, supra, and *BASF Wyandotte Corp.*, supra.

Local's 1760's financial problems and even the resignation of its former president, Kiefer, and his replacement by Brown did not amount to a legally recognized schism. The local union still functioned as bargaining representative and its relationship with the International remained unaffected. Thomas' concern about who was running the union is belied by his failure even to call Kiefer, with whom he usually dealt, in order to confirm whether Brown had replaced him. Respondent's reliance on Local 1760's financial difficulties and the replacement of some officers in a still functioning union falls far short of evidence which would support the schism defense.

Nor do these circumstances support a finding that Local 1760 was defunct, a lesser standard which Respondent never mentioned in its April 5 letter, but might also support a lawful withdrawal of recognition in some circumstances. "A bargaining representative is considered defunct and its contract is not a bar only if it is unable or unwilling to represent the employees." *Yates Industries*, supra, 264 NLRB at 1249. The evidence in this case does not even begin to support a finding that Local 1760 was defunct. It actively represented the employees of other employers with whom it had contracts and expressed its willingness and ability to administer the contract with Respondent. Local 1760 was not defunct and Respondent's inartful and exaggerated description of Local 1760's financial difficulties during the period immediately prior to its withdrawal of recognition could not justify the withdrawal and refusal to bargain. See also *BASF Wyandotte*, supra, 276 NLRB at 504.

In these circumstances, Respondent's withdrawal of recognition of Local 1760 was violative of Section 8(a)(5) and (1) of the Act.

2. The unlawful unilateral conduct and failure to withhold and remit dues

It is uncontested that Respondent unilaterally granted employees 6-paid sick days as of April 6, 1994, without notifying and giving Local 1760 an opportunity to bargain over the

matter. This was part of a unilaterally imposed policy and procedure manual and a change in existing terms and benefits in violation of Section 8(a)(5) and (1) of Act.

It is also uncontested that Respondent has failed to deduct union dues from employees and to remit them, first to Local 1760, and, thereafter, to Local 1392, as required by the collective-bargaining agreement. This also constitutes a violation of Section 8(a)(5) and (1) of the Act because, as shown below, Respondent was not permitted to rely on the employees' petition to rescind the signed dues authorizations.

Initially, it is clear that the attempted revocation of dues-checkoff authorizations in the employee petition attached to the April 5 letter did not comport with the requirement for revocation contained in the authorizations themselves. For example, contrary to the language in the authorizations, the revocations were not sent directly to the Union. Even assuming that Respondent's transmission of the petitions to Kiefer satisfied this requirement, the dates on the petition did not come within the escape periods set forth in the authorizations. Thus, the revocations were not valid and Respondent had no right to halt the collection and remittance of dues.

That aspect of the petition in which the employees purport to resign from the Union likewise does not excuse Respondent from collecting and remitting dues. As with the revocation of authorizations, it is questionable whether the purported resignations were effective simply because they were presented in a petition to the Respondent which was later transmitted to the Union. However, even assuming that the resignations were effective, this does not rescind the dues authorizations because the employees were required to pay dues or their equivalent under a valid contractual union security clause. See *Auto Workers Local #1752 (Schweizer Aircraft)*, 320 NLRB 528 (1995).[3]

3. Local 1392 is the valid successor to Local 1760

A mere change in the internal structure or affiliation of a union does not excuse the obligation of an employer to bargain with that union. It is only where an "affiliation vote is conducted with less than adequate due process safeguards or where the organizational changes are so dramatic that the post-affiliation union lacks substantial continuity with the preaffiliation union will the Board find the employer's duty to bargain does not continue." *Sullivan Bros. Printers*, 317 NLRB 561, 563 (1995). The burden of proving deficiencies in the affiliation process falls on the party seeking to escape a bargaining obligation on those grounds. Id. Mergers which involve sister locals, like this one, have less inherent potential for significant changes. Moreover, although secret-ballot elections are not required to satisfy minimal due process, if one is held, as it was here, and there is no objection to it, the Board normally upholds the merger. See 317 NLRB at 563.

The evidence here more than satisfies the Board's minimal requirements. Employees were notified of the merger vote and participated in a secret-ballot election with safeguards against tampering. The voter participation was almost 90% percent the vote to merge with Local 1392 was overwhelming; and no one filed objections to the election or the affiliation process. Moreover, there can be no objection to the failure of Respondent's employees to participate, because they no longer belonged to the Union at the time of the election. Nonmembers need not be permitted to vote in a merger. See *Santa Barbara Humane Society*, 302 NLRB 833, 836 (1991).[4]

The evidence also shows a substantial continuity between Local 1760 and Local 1392. Former Local 1760 members remain members of the same International and continue as a separate unit of Local 1392. The same contracts are administered by the same people, and, except for Respondent, all employers who had contracts with Local 1760 continued their bargaining relationship with Local 1392. Respondent has not pointed to anything that amounts to a "dramatic change" as a result of the merger that would raise a question as to representation. See *Sullivan Bros.*, supra, 317 NLRB at 563.

In these circumstances, the merger of Local 1760 into Local 1392 is valid and Local 1392 succeeds to the bargaining rights previously vested in Local 1760. Respondent is now obligated to recognize and bargain with Local 1392 and has been since January 1, 1995.

CONCLUSIONS OF LAW

1. By withdrawing recognition of Local 1760 as the bargaining representative of its production and maintenance employees, by unilaterally failing to apply the terms of the 1993–1995 contract, including the failure to withhold and remit dues, by unilaterally changing the terms and conditions of employment of unit employees, including the grant of paid sick leave days, and by failing to recognize and bargain with Local 1362 as the lawful successor to Local 1760, Respondent violated Section 8(a)(5) and (1) of the Act.

2. The above violations constitute unfair labor practices within the meaning of the Act.

THE REMEDY

Respondent will be ordered to cease and desist from the unlawful conduct found here and to take certain affirmative action to effectuate the policies of the Act. Respondent will be ordered to honor the terms of the 1993–1995 collective-bargaining agreement and to make employees whole for any losses sustained by them by virtue of the failure to apply the agreement to them, in accordance with *Ogle Protection Service*, 182 NLRB 682 (1970). Respondent shall also be ordered to make the Union whole for any loss of dues as a result of its failure to give effect to the dues-checkoff provisions of the agreement and the valid authorizations of employees. See *BASF-Wyandotte*, supra.[5]

The remedy here will extend beyond the expiration of the bargaining agreement. Unlike in *Burger Pits, Inc.*, supra, where the employer's withdrawal of recognition came very near the expiration of the agreement and was viewed as "anticipatory" because it suggested a good-faith doubt of majority in connection with the negotiation of a new agreement,

[3] The union-security clause in this case is valid under Indiana law. See Hardin, *Developing Labor Law*, Vol. 2, pp. 1525 and 1531 fn. 241 (3d ed. 1992).

[4] Even if the unit employees were counted as having opposed the merger, it would have been approved overwhelmingly.

[5] The contractual union security and dues-checkoff provisions do not survive the expiration of the agreement. *Industrial Union of Marine Workers v. NLRB (Bethlehem Steel)*, 320 F.2d 615, 619 (3d Cir. 1963), cert. denied 375 U.S. 984 (1964).

the withdrawal of recognition here came only 5 months after the contract took effect and 19 months before its expiration. The employee petition relied on by Respondent here would have been stale at the expiration of the contract and would have, in any event, been tainted by Respondent's unlawful refusal to bargain and unilateral conduct over an extended period of time. See *Rock Tenn Co.*, 315 NLRB 670, 672–673 (1994), enf. granted 69 F.3d 803 (7th Cir. 1995). "Although an employer's contractual obligations cease with the expiration of the contract, those terms and conditions established by the contract and governing the employer-employee, as opposed to the employer-union, relationship survive the contract and present the employer with a continuing obligation to apply those terms and conditions, unless the employer gives timely notice of its intention to modify a condition of employment and the union fails to timely request bargaining, or impasse is reached during bargaining over the proposed change." *Bay Area Sealers*, 251 NLRB 89, 89–90 (1980), citing numerous cases.

[Recommended Order omitted from publication.]